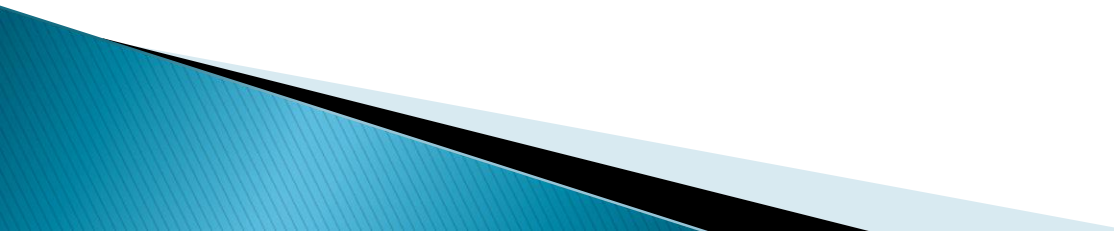


Rules of Appellate Procedure

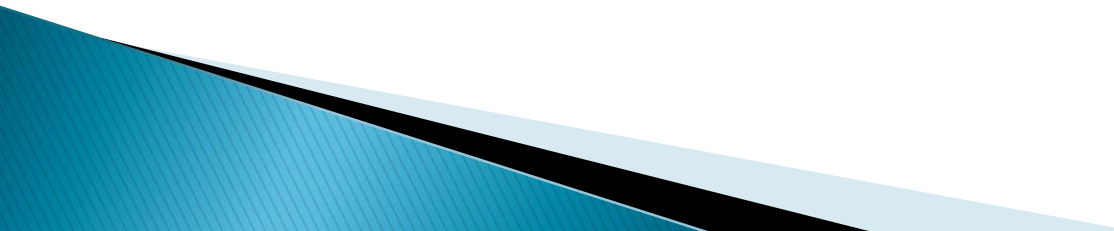
2019

CAFL APPELLATE PANEL CERTIFICATION
TRAINING

Rules of Appellate Procedure

- ▶ Notice of Appeal
 - ▶ Transcripts / Assembly of Record
 - ▶ Docketing
 - ▶ Briefs
 - ▶ Record Appendix
 - ▶ Filing of Post-Brief / Post-Argument Letters
 - ▶ Reconsideration / Further Appellate Review
- 

Notice of Appeal

- ▶ **Rule 3** (How to file and serve the notice of appeal and what the content must be)
 - ▶ **Rule 4** (When to file the notice of appeal and in what court)
 - ▶ **Rule 14** (How to get an enlargement of time if the notice of appeal was not filed in a timely way)
- 

Things to look for when reviewing the Notice of Appeal

- ▶ Appeal of final decree
- ▶ Basic Content:
 - Identifies party appealing;
 - Identifies decree (or portion thereof) that is being appealed;
 - Signed by parent or child's counsel. [Rule 3(c)]
- ▶ Timely filed



Timeliness of Notice

- ▶ 30 days from the date the decree is docketed.
[Rule 4(a); c. 119, s. 27]
- ▶ Tolling of time period:
 - Certain post-trial motions will toll the time period for filing a notice of appeal. [Rule 4(a)]. If timely filed, any prior notice of appeal will have no effect.
 - A new notice of appeal must be filed within 30 days of the decision on the last remaining motion.

Late Notice of Appeal

Requests for leave to file a late notice of appeal in TPR or Guardianship proceedings fall under Rule 4(c) and 14(b):

▶ Rule 4(c)

- Motion filed in trial court.
- Allows for additional 30 days upon a showing of “excusable neglect.”
- Cannot be filed if more than 60 days after decree.

▶ Rule 14(b)

- Filed in the Appeals Court as a single justice petition.
- Must be filed within 1 year from the date of the decree.
- Must be able to show “good cause” for failure to timely appeal.

Appealing an adjudication decree only

- ▶ **NOTE:** Appeals from care and protection adjudications/dispositions other than TPR are governed by statute. G.L. c. 119, s. 27. Statutory appeal periods trump the Rules and cannot be extended.

Time for a Quiz!

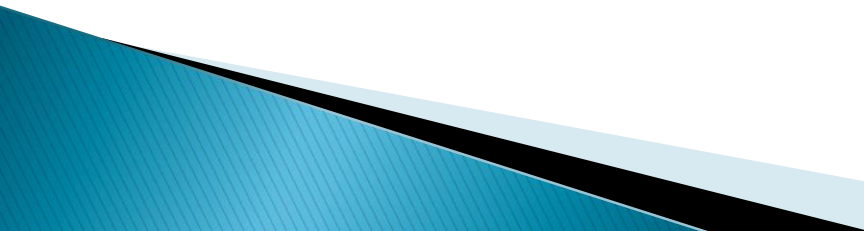


Hypo 1

Mother is appealing a TPR decree that entered on January 1, 2019. She signs and files a notice of appeal that day. On January 9, 2019, mother's trial counsel files a "Motion to Reopen the Evidence." The motion is denied that day. You are appointed on February 15, 2019 as appellate counsel for mother.

- ▶ What is the first thing you do?

- ▶ What, if anything, do you notice about whether the original notice of appeal is okay?

- ▶ What, if anything, should you do next or file with the court?
 - ▶ Do you need to file any motions?
 - ▶ * Hint, look at Rule 4(a)
- 

What if your motion is denied?



Hypo 2

You are appointed to represent an appellant-father. You review the notice of appeal and see that it is not signed by the father. Trial counsel informs you that the father had a medical emergency immediately following trial. He overdosed and was in a coma for several weeks. The trial attorney reports that he filed the notice of appeal on behalf of the father to preserve his rights. Three months have gone by since the entry of the TPR decree.

- ▶ Is father's notice of appeal valid?

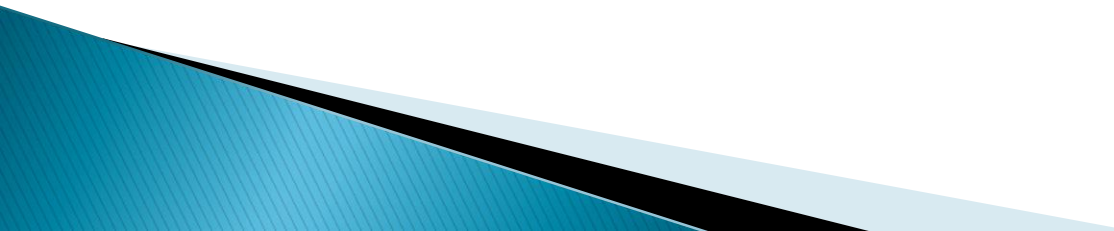
▶ Can father file a late notice of appeal?

▶ What does father need to show?

- ▶ Where should that motion / petition be filed?

Transcripts

Child welfare cases – Rule 8(b)(2)

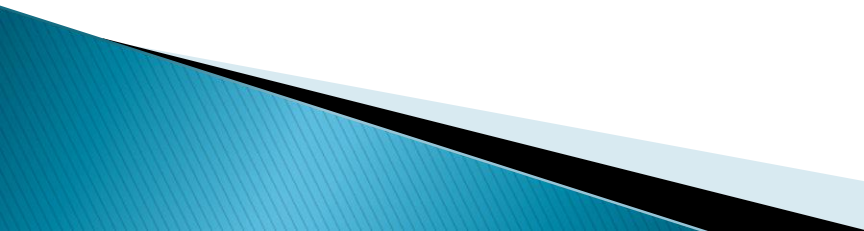
- ▶ Clerk of the trial court shall order transcript within 14 days of filing of notice of appeal.
 - ▶ Clerk shall serve a copy of the order on all parties.
 - ▶ The transcriber shall deliver the transcript to the clerk of the lower court upon completion. [Rule 8(b)(3)].
- 

Transcript Problems

- ▶ **Unavailable transcript – Rule 8(c):**
 - File motion to reconstruct the record within 14 days of filing notice of appeal (or as soon as aware of missing portion).
 - Parties must confer and appellant submit a statement to the trial court.
 - Any other party may file an objection or proposed amendments within 14 days of service.
 - The lower court shall promptly settle disputes and approve statement for inclusion in the record on appeal.
- ▶ **Correction or Modification of Record – Rule 8(e)**
 - Parties may correct or modify record by stipulation in accordance with the rule.
 - Lower court must approve any stipulation for inclusion in the record.

Assembly of Record

Assembly and Transmission of Record – Rule 9

- ▶ In practice, the record is ready to assemble when judge's findings have been filed and transcript has been received by the trial court.
 - ▶ Rule 9(e) requires the clerk to assemble the record within 21 days of receipt of the transcript.
 - ▶ All original papers and exhibits are kept at the trial court.
- 

Docketing Appeal

Rule 10

- Appellant must docket appeal within 14 days of receiving the notice of assembly.
- In order to docket the appeal, counsel must file a motion to waive the docketing fee along with a recent affidavit of indigency.
- You must also complete a Civil Appeals Entry Form (available on Appeals Court website). – This is not referenced in the Rules, but is required for all electronically entered appeals. This is different than the Civil Docketing Statement, which is required by standing order within 14 days of date of entry of appeal.

Late Docketing

- ▶ If client is hard to reach (but hasn't disappeared), counsel should docket appeal and file a motion to enlarge time for filing affidavit of indigence.
- ▶ If time has expired, counsel must file motion under **Rule 10(a)(3)** to docket late. The motion may be filed in *either* the trial court or before a single justice of the Appeals Court.

Dismissal of Appeal for Failure to Docket

- ▶ Under **Rule 10(c)**, an appellee can move in the trial court to dismiss the appeal for failure to docket.
- ▶ Appellee has the burden of showing “inexcusable neglect.”



Here comes another quiz!



Hypo 3

You represent the appellant–mother. She is incarcerated in Texas, and you are having trouble getting a signed affidavit of indigency from her, despite having mailed the form twice. You receive notice that the record has assembled, but you know that you will not have her signed affidavit within 14 days. What should you do?

What if you represent the appellee–child who wants to be adopted by her aunt, with whom she’s lived for three years? She hasn’t seen her mother in close to two years. What, if anything, should you do?

Briefs

Rules 16: The Brief (content—read this Rule!)

Rule 18: The Appendix (contents, filing, service)

Rule 19: Filing & service of briefs, appendices, and some motions

Rule 20: Form & Length of Briefs



Rule 16 – Content of Briefs

- ▶ Rule 16(a)–(b): Content required in appellant and appellee main briefs, including content of addendum.
- ▶ Rule 16(c): Reply briefs.
- ▶ Rule 16(e): References to the record.
- ▶ Rule 16(k): Brief must contain certification that brief complies with the rules, including a detailed description of how compliance with the applicable length limit of Rule 20 was ascertained.
- ▶ Rule 16(a)(15): Certificate of service, with content required by Rule 13(e), shall be included within the brief following the 16(k) certification.

Rule 18 – Record Appendix

- ▶ Rule 18(a)(1)(A) lists the items in order in which they must appear in the appendix.
- ▶ A table of contents is required.
- ▶ The first volume of a multi-volume appendix must include a master table of contents for all volumes, and each individual volume must also include its own table of contents.
- ▶ Each appendix volume should be designated by a Roman numeral with the cover of each volume as page 1. [Rule 20(a)(5)].
- ▶ Exhibits and Transcripts may be contained in separate volumes, subject to the requirements of Rules 18 and 20. [Rule 19(d)(2)].

Rule 20 – Form & Length

- ▶ Rule 20(a)(2): Length of briefs, except those in cross–appeals.
 - Main brief: Max of 50 pages using mono–spaced font or 11,000 words using proportionally–spaced font.
 - Reply brief: Max of 20 pages or 4,500 words.
 - Only those parts of brief required by Rule 16(a)(5)–(11) count toward limits.
- ▶ Rule 20(a)(4): Format, pagination, margins of text.
- ▶ Rule 20(a)(5): Format, pagination and length of appendices.
- ▶ Rule 20(a)(6): Content of Cover.
- ▶ Rule 20(b): Form of other motions and documents.

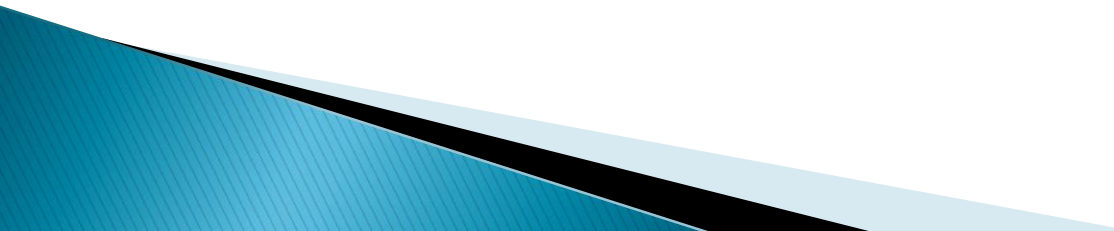
Rule 19 – Filing and Service; Deadlines

- ▶ Rule 19(a): Brief deadlines.
 - Appellant = 40 days after entry of appeal.
 - Appellee = 30 days after service of appellant's brief.
 - Reply brief = 14 days after service of appellee's brief, or 7 days before argument, whichever is earlier.
- ▶ Rule 19(b): Cross–appeal deadlines.
- ▶ Rule 19 also discusses the number of paper copies to be filed and served in each appellate court, but shouldn't need to worry about this with e–filing.

Rule 16(l) and 22(c)(2) Letters

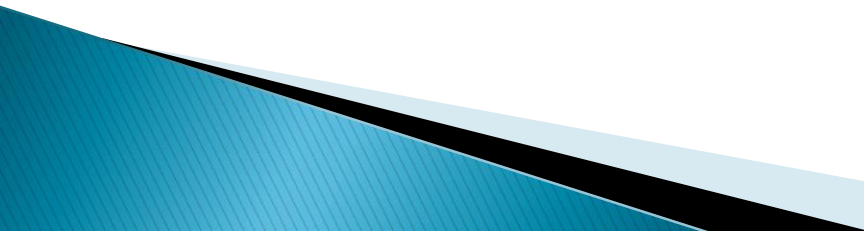


Rule 16(l) Letters Post-Brief or Post-Argument Letters

- ▶ To address any **pertinent authorities** that come to counsel's attention after filing of brief or after oral argument.
 - ▶ Should not contain argument.
 - ▶ Cite to portion of brief or oral argument to which citation(s) pertain.
- 

Rule 22(c)(2)

Post-Argument Letters

- ▶ May be filed by any party:
 1. When expressly allowed or authorized by the Court during oral argument;
 2. In order to correct a factual misstatement made during oral argument; or
 3. Upon motion to submit such letter.
 - ▶ Motion should be separate from the letter but filed simultaneously with the letter.
- 

No such thing as “hybrid” 16(l) and 22(c) Letter


- ▶ These letters serve different purposes.
- ▶ The Rules are narrow, and it’s important to follow the appropriate Rule.
- ▶ If you represent an opposing party and don’t believe that the filing party followed the Rules, you can:
 - move to strike the letter (in the case of 16(l) letters),
 - oppose the motion for leave to file a 22(c) letter, or
 - oppose the filing of a 22(c) letter when no motion for leave or when the content of the letter exceeds the bounds of what was authorized/requested by the panel.

Last quiz!



Hypo 4: Part 1

You represent the appellant–mother. You finish arguing your well–briefed and thoroughly prepared case on behalf of mother. One of the issues raised was the lack of an adoption plan for the child, who had been placed in multiple foster homes and did not have an identified adoptive resource at the time of trial. The appellee–child’s attorney begins her argument, and says, “I know I did not brief this, and it was not raised below, but I want to let the panel know that the child is now placed in a pre–adoptive home with her paternal aunt and is doing very well. The aunt has identified a number of therapeutic supports for the child and they are working hard to deal with the child’s traumatic history. G.L. c. 119, s. 26 allows me to bring this information to the court’s attention.” **What can you do?**



Part 2

- ▶ What if one of the justices on the panel invites all counsel to submit a letter regarding the child's ability to inform the court of this information under c. 119, s. 26? Does that change anything?

Decision/Rescript

Rule 23

- ▶ Decision = written opinion
- ▶ Rescript = appellate court's order or mandate to the lower court disposing of the appeal.
- ▶ Generally, decisions on our cases are sent to parties by e-mail within 30–90 days of oral argument.
- ▶ The rescript is transmitted (or issued) to the lower court 28 days after the date of the decision UNLESS time is shortened or enlarged by order OR a motion for reconsideration and/or FAR is timely filed.

Motion for Reconsideration / FAR

Motion for Reconsideration: [Rule 27]

- ▶ Filed in the Appeals Court.
- ▶ Filed within 14 days of decision.
- ▶ Shall not exceed 10 pages or 2,000 words.
- ▶ Must include a certification of compliance with length/word count requirements as specified in Rule 16(k).
- ▶ No response allowed unless requested by the court.

Further Appellate Review (FAR): [Rule 27.1]

- ▶ Filed with the SJC.
- ▶ Filed within 21 days of decision.
- ▶ Content and page limit/word count requirements [Rule 27.1(b)]. Certificate of compliance required.
- ▶ Any response must be filed within 14 days of filing of application. [Rule 27.1(c)].